Chan T'shiao Li & Anor v Malcom Fernandez & Ors (Low Beng Choo, proposed intervener)

HIGH COURT (KUALA LUMPUR) — WRIT SUMMON NO WA-22NCVC-28–01 OF 2023
LEONG WAI HONG JC
5 FEBRUARY 2024

Civil Procedure — Intervener — Right to intervene — Plaintiff daughters of deceased testator who were excluded from inheriting anything under her will sued executors to challenge validity of will — Plaintiffs in their statement of claim made several adverse allegations against lawyer who prepared the will but sought no relief against her in the action — Whether lawyer's application to intervene and be added as defendant should be allowed to enable her to defend her conduct in the case and prevent any adverse findings from being made against her in her absence — Whether all parties who would be affected by court's judgment/order in the suit should be made parties to the action — Rules of Court 2012 O 15 r 6(2)(b)

The plaintiffs were the daughters of Lim Siew Kim ('the deceased') who was the daughter of a famous Malaysian tycoon. The first two defendants were the named executors of the deceased's will which bequeathed 70% of her approximately RM1.6 billion estate to one Dikim Foundation and left the remaining 30% to the deceased's son, the third defendant. The plaintiffs challenged the validity of the will on the grounds, inter alia, that the deceased lacked testamentary capacity, that there were suspicious circumstances surrounding the making of the will and that fraud, undue influence and coercion were brought to bear upon the testator in the making of the will. A senior lawyer ('LBC') who had prepared the will for the deceased and was also a witness thereto, and against whom no relief was sought by the plaintiffs in the action, applied to intervene and be added as a defendant on the ground that the plaintiffs in their statement of claim ('SOC') had accused her of exercising undue influence and coercion upon the deceased into making the will and alleged that she stood to benefit under the will due to her position in Dikim Foundation. In her intervener application, LBC denied all the adverse allegations made against her by the plaintiffs and said she should be allowed to participate in the proceedings as a defendant to clear her name and avoid adverse findings from being made against her in her absence. The parties to the action had no objections to LBC's application.

Held, allowing the intervener application:

(1) In deciding whether or not to allow an application by an intervener to be added as a defendant when no relief was sought against the intervener by

the plaintiff, the courts would generally consider whether the plaintiff should be compelled to sue a party whom the plaintiff did not want to sue and whether any judgment/order made in the suit would affect the proposed intervener's rights or liabilities vis a vis any party to the action or affect the intervener's commercial or legal rights. This court was, however, of the view that taking a constricted approach to deciding such an application, would not do justice to the plain meaning of the words in O 15 r 6(2)(b) of the Rules of Court 2012 (see paras 29–31).

(2) This court took the view that access to justice was one of the main pillars of a vibrant democracy. And if a person came to court to apply to be added as a defendant, his application should be viewed favourably unless it was clear that he was a 'busybody' in law or mala fide in his application. Litigation was expensive and time consuming and no one would want to voluntarily get embroiled in litigation unless that person was clearly aggrieved (see para 35).

(3) An application to be added as a defendant in a suit should be allowed if serious charges of fraud and attacks on character were made on the proposed intervener in the statement of claim of the plaintiffs, even if no reliefs were claimed by the plaintiffs against the proposed intervener (see para 37).

(4) Given the serious allegations raised by the plaintiffs against LBC in their statement of claim, it was only right that LBC should be allowed to intervene in the suit to defend her good name and reputation as well as against any liabilities which might accrue to her if adverse findings were made against her in the suit. LBC's application should also be allowed on the principle that all parties affected by a court order must be made parties to the suit (see paras 39 & 49).

[Bahasa Malaysia summary

Plaintif merupakan anak perempuan Lim Siew Kim ('si mati') yang merupakan anak kepada hartawan terkenal Malaysia. Dua defendan pertama ialah wasi yang dinamakan dalam wasiat si mati yang mewariskan 70% daripada harta pusakanya berjumlah lebih kurang RM1.6 bilion kepada satu Yayasan Dikim dan meninggalkan baki 30% kepada anak lelaki si mati, defendan ketiga. Plaintif mencabar kesahihan wasiat atas alasan, antara lain, bahawa si mati tidak mempunyai keupayaan berwasiat, bahawa terdapat keadaan yang mencurigakan sekitar pembuatan wasiat dan bahawa penipuan, pengaruh yang tidak wajar dan paksaan telah dikenakan ke atas pewasiat dalam pembuatan wasiat. Seorang peguam kanan ('LBC') yang telah menyediakan wasiat untuk si mati dan juga menjadi saksinya, dan terhadapnya tiada relif diminta oleh plaintif dalam tindakan itu, memohon untuk mencelah dan ditambah sebagai defendan atas alasan bahawa plaintif dalam pernyataan tuntutan mereka ('PT') telah menuduhnya menggunakan pengaruh dan paksaan yang tidak wajar ke

atas si mati untuk membuat wasiat dan mendakwa bahawa dia berpeluang mendapat manfaat di bawah wasiat itu kerana kedudukannya dalam Yayasan Dikim. Dalam permohonan pencelahnya, LBC menafikan semua dakwaan buruk yang dibuat terhadapnya oleh plaintif dan berkata dia harus dibenarkan untuk mengambil bahagian dalam prosiding sebagai defendan untuk membersihkan namanya dan mengelakkan dapatan bertentangan daripada dibuat terhadapnya semasa ketiadaannya. Pihak-pihak dalam tindakan itu tidak mempunyai bantahan terhadap permohonan LBC.

Diputuskan, membenarkan permohonan pencelah:

(1) Dalam memutuskan sama ada untuk membenarkan atau tidak permohonan oleh pencelah untuk ditambah sebagai defendan apabila tiada relif diminta terhadap pencelah itu oleh plaintif, mahkamah secara amnya akan mempertimbangkan sama ada plaintif perlu dipaksa untuk menyaman pihak yang plaintif tidak mahu menyaman dan sama ada sebarang penghakiman/perintah yang dibuat dalam saman itu akan menjejaskan hak atau liabiliti pencelah yang dicadangkan terhadap mana-mana pihak dalam tindakan itu atau menjejaskan hak komersial atau undang-undang pencelah. Mahkamah ini, bagaimanapun, berpendapat bahawa mengambil pendekatan terhad untuk memutuskan permohonan sedemikian, tidak akan memberi keadilan kepada maksud jelas perkataan dalam A 15 k 6(2)(b) Kaedah-Kaedah Mahkamah 2012 (lihat perenggan 29–31).

(2) Mahkamah ini berpandangan bahawa akses kepada keadilan adalah salah satu tiang utama demokrasi berperibadi. Dan jika seseorang datang ke mahkamah untuk memohon untuk ditambah sebagai defendan, permohonannya harus dipandang baik melainkan jelas bahawa dia adalah seorang penyibuk (*busybody*) dalam undang-undang atau mala fide dalam permohonannya. Litigasi adalah mahal dan memakan masa dan tiada siapa yang mahu terlibat secara sukarela dalam litigasi melainkan orang itu jelas terkilan (lihat perenggan 35).

(3) Permohonan untuk ditambah sebagai defendan dalam saman hendaklah dibenarkan jika tuduhan serius penipuan dan serangan terhadap watak telah dibuat ke atas pencelah yang dicadangkan dalam pernyataan tuntutan plaintif, walaupun tiada relif dituntut oleh plaintif terhadap pencelah yang dicadangkan (lihat perenggan 37).

(4) Memandangkan dakwaan serius yang dibangkitkan oleh plaintif terhadap LBC dalam pernyataan tuntutan mereka, ia adalah wajar bahawa LBC dibenarkan untuk mencelah dalam saman itu untuk mempertahankan nama baik dan reputasinya serta terhadap sebarang liabiliti yang mungkin terakru kepada dia jika dapatan bertentangan dibuat terhadapnya dalam saman itu. Permohonan LBC juga harus dibenarkan atas prinsip bahawa semua pihak yang terjejas oleh perintah

mahkamah mesti dijadikan pihak dalam saman itu (lihat perenggan 39 & 49).]

Cases referred to

Attorney-General v Aljunied-Hougang-Punggol East Town Council [2015] SGCA 60; ; [2016] 1 SLR 915, CA (refd)
Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492; [2009] 4 MLRH 48, HC (refd)
Dollfus Mieg Et Compagnie SA v Bank of England [1951] Ch 33; [1950] 2 All ER 605 (refd)
Lee Phoy Hong v Loo Hun Liong [2023] MLJU 2512; [2023] AMEJ 2270, HC (refd)
Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52, PC (folld)
Saujana Resort (M) Bhd v Chin Cheen Foh & Ors and another appeal [2021] 3 MLJ 873; [2021] 3 CLJ 71, CA (refd)
Tajjul Ariffin bin Mustafa v Heng Cheng Hong [1993] 2 MLJ 143, SC (folld)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63, SC (refd)
Wee Soon Kim Anthony v Law Society of Singapore [2001] 4 SLR 25, CA (distd)

Legislation referred to

Rules of Court 2012 O 15 r 6, 6(2)(b), 6(2)(b)(i), 6(2)(b)(ii)
Rules of Court 2021 [SG] O 15 r 6(2)(b)(i), 6(2)(b)(ii)

V Sithambaram (with Ruebankumar) (Sitham & Assoc) for the plaintiff.
Avinder Singh Gill (with Mohd Irwan Ismail and Chia Eng Yi) (Avinder Gill Chambers) for the first defendant.
Nurul Hanani bt Azamuddin (Raj, Ong & Yudistra) for the second defendant.
Foong Kar Yee (Dennis Nik & Wong) for the third defendant.
S Sivaneindran (with James Khong and Kok Hao Ying) (James Khong) for the proposed intervener.

Leong Wai Hong JC:

INTRODUCTION

[1] The proposed intervener, Low Beng Choo a senior lawyer at the Malaysian Bar, applied to me to be granted leave to intervene and be added as a defendant in a writ action before me.

[2] The writ action is essentially to challenge the validity of a will dated 28 April 2022, ('impugned will') on the grounds, inter alia, that the testator, the late Lim Siew Kim ('deceased') lacked testamentary capacity, the existence of suspicious circumstances and the exertion of undue influence on the deceased in the making of the impugned will.

A **[3]** The writ action does not claim any relief against Low Beng Choo. Thus, the acute issue that arises for my determination is whether Low Beng Choo can intervene to be added as a defendant in this suit when the plaintiffs do not claim any relief against her.

B **[4]** She alleges that she has a right to intervene to defend her reputation and good name as, to quote from her counsel's written submissions in encl 106, 'serious allegations have been made in the statement of claim against the proposed intervener which are adverse to her professional reputation and her livelihood without naming her as a party.' unquote.

C

[5] A person's reputation has long been considered sacrosanct. A saying that comes to mind easily is this immortal phrase by William Shakespeare in *The Tragedy of Othello, The Moor of Venice* written circa 1603, 'Good name in man and woman, dear my lord, Is the immediate jewel of their souls' — Othello (Act III Scene iii) (see also *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492; [2009] 4 MLRH 48 (HC), Harmindar Singh J).

D

E **[6]** So, is Low Beng Choo right in her contention?

PROCEEDINGS BEFORE ME

[7] All the plaintiffs and defendants have no objections to her application to intervene as a defendant. But the court is no mere rubber stamp. The court must, itself, be satisfied that there is a valid basis before granting the application. This is because the addition of an additional party will add to the time needed to dispose of the trial. To the court, time is a scarce commodity.

F

G **[8]** At the first hearing on 19 January 2024 counsel was not able to produce direct authorities to satisfy the court. I thus adjourned the hearing for counsel to file a further written submissions and fix my decision to be delivered on 5 February 2024. Deeper research by counsel and me revealed relevant cases. I now deliver my decision.

H

THE PARTIES

[9] The deceased is a daughter of the late tycoon Tan Sri Lim Goh Tong, the founder of the Genting Group of companies. She is also the wife of the late Mr Dick Chan Teik Huat of the accounting fiRMknown as Kassim Chan & Co (now Deloitte).

I

[10] The first plaintiff Chan T'shiao Li and the second plaintiff Kimberley Chan Tshiao Miin are the second and third children (daughters) respectively of the deceased.

[11] The first defendant Malcolm Fernandez of Messrs C Sukumaran & Co is a lawyer who for many years acted for the deceased and various companies controlled by the deceased. The second defendant Chan Mei Yee is the personal assistant of the deceased for many years.

[12] Both the first and second defendants are executors named in the impugned will. They are not family members of the deceased.

[13] The third defendant is Marcus Chan Jau Chwen who is the son of the deceased.

BACKGROUND FACTS

[14] The estate of the deceased is huge by any standards. The plaintiffs say the estimated value of the estate is about RM1.6 billion. The defendants say 'if we accept the plaintiffs' valuation of the estate at RM1.6 billion and the will is disproved, then the plaintiffs, together, stand to gain approximately RM799m' (see encl 29 para 3.6 and encl 33 para 66).

[15] The bulk of the estate goes to a foundation called Dikim Foundation (70%) and to the third defendant Marcus Chan Jau Chwen (30%).

ISSUE BEFORE ME

[16] The issue before me is whether a person can intervene to be added as a defendant in a suit when the plaintiffs do not claim any relief against the said person.

LOW BENG CHOO'S CONTENTIONS

[17] Low Beng Choo grounded her locus standi to intervene based on paras 26–28 of the statement of claim which she charged constitute gravamens on her reputation and character as a lawyer and as an individual.

[18] These paragraphs, which I reproduce verbatim from her counsel's written submissions in encl 106 and in the same sequence, read as follows:

> Under 'Suspicious Circumstances':
>
> 26.8 One of the witnesses to the impugned will is Low Beng Choo, an advocate and solicitor of the High Court of Malaya.

26.9 Low Beng Choo was also the lawyer responsible in preparing the impugned will.

26.2 The manner in which the impugned will was executed on 28/4/2022 is highly suspicious.

26.7 It would appear that the signature of the deceased to the impugned will was secretly procured right after the morphine treatment and thoracentesis procedure.

26.11 Low Beng Choo is therefore a beneficiary to the deceased's Estate through DIKIM FOUNDATION, the major beneficiary under the impugned will.

'26.13 There were suspicious circumstances surrounding the making of the impugned will.'

Under 'Undue Influence':

27.5 ... Low Beng Choo ... had therefore unduly influenced and/or coerced the deceased into executing the impugned will having regard to the facts and circumstances as stated hereinabove.

Under 'Fraud':

28.6 [T]he witnesses to the impugned will and/or the persons who procured the signature of the deceased to the impugned will should have known or ought to have known that the deceased at the relevant material time was not in the position to comprehend or approve the contents of the impugned will.

28.4 Low Beng Choo was, amongst the person responsible in procuring the signature of the deceased to the impugned will on 28/4/2022.

28.7 The deceased's signature to the impugned will was therefore obtained by fraud.

28.8 It was later discovered that Low Beng Choo had a direct interest to the deceased's estate through DIKIM FOUNDATION, whereby she became a director of DIKIM FOUNDATION on 2/6/2022, approximately two (2) months after the execution of the impugned will.

[19] Low Beng Choo contends that she should be allowed to intervene as a defendant to resist the plaintiffs' suit in view of the serious allegations levelled by the plaintiffs against her that she is a 'beneficiary to the deceased's estate' and 'had a direct interest to the deceased's estate'.

[20] She denies all the adverse allegations made against her in the statement of claim. She states that she does not stand to gain either under the impugned will or from her appointment as a trustee of the Dikim Foundation.

ADDING A PERSON AS A PARTY — O 15 R 6(2)(b) OF THE ROC 2012

[21] The relevant provision in the Rules of Court 2012 on the adding of a person as a party is O 15 r 6(2)(b) of the ROC 2012 which reads — misjoinder and non-joinder of parties (O 15 r 6):

(a) A cause or matter shall not be defeated by reason of the misjoinder or non-joinder of any party, and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) Subject to this rule, at any stage of the proceedings in any cause or matter, *the Court may* on such terms as it thinks just and either of its own motion or on application —

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) *order any of the following persons to be added as a party, namely —*

(i) *any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*

(ii) *any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter*. (Emphasis added.)

RELEVANT CASES ON ADDING A PERSON AS A PARTY — O 15 R 6(2)(b) OF THE ROC 2012

[22] There are many reported cases on this issue. They can be confusing. Guidance can best be obtained from the Privy Council decision in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 and the Supreme Court decision in *Tajjul Ariffin bin Mustafa v Heng Cheng Hong* [1993] 2 MLJ 143 Edgar Joseph Jr SCJ.

[23] A useful recent survey of the relevant case law can be gleaned from *Lee Phoy Hong v Loo Hun Liong* [2023] MLJU 2512; [2023] AMEJ 2270 (HC) Azizan Md Arshad JC at paras 28–29.

[24] The Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 via Lord Diplock surveyed the cases and distilled the relevant principles from pp 55–56 which bear setting out in extenso:

It is nevertheless submitted on behalf of the company as an alternative ground of appeal from the Federal Court's interlocutory order that the Federal Court had no jurisdiction to add the contractor as a party because he had no sufficient interest in the subject matter of the proceedings. The Federal Court has the same power to add an additional party to an appeal as the High Court has to add a party to an action. This power is conferred by O 16 r 11, which is in the same terms as the former O 16

A r 11, of the English Rules of the Supreme Court. To come within the words of the rule the party to be added must be one 'who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter'. These words have been the subject of voluminous judicial exegesis and
B *Amon v Raphael Tuck & Sons Ltd* [1956] 1 QB 357 contains a useful collection of citations to Devlin J of many of the authorities prior to 1956. Devlin J's analysis of those authorities led him to reject the view expressed by Lord Esher MR in *Byrne v Brown* (1889) 22 QBD 657 that the rule ought to be given a wide interpretation so as 'to secure that, when a court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law
C other action may be brought in respect of that transaction, the court shall have power to bring all the parties before it, and determine the rights of all in one proceeding'. Devlin J himself accordingly propounded in *Amon*'s case a much narrower interpretation of the rule which it is unnecessary to repeat here for it was over-ruled, in their Lordships' view rightly, by the Court of Appeal in *Gurtner v*
D *Circuit* [1968] 2 QB 587 a case decided after the date of the judgment of the Federal Court of Malaysia in the present case.

> *The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights*
E *will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. To achieve this object calls for a flexibility of approach* which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.

F It has been sometimes said as in *Moser v Marsden* [1892] 1 Ch 487 and in *In re IG Farbenindustrie AG* [1944] Ch 41 that a party may be added if his legal interests will be affected by the judgment in the action but not if his commercial interests only would be affected. *While their Lordships agree that the mere fact that a person is likely to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy*
G *between 'legal' and 'commercial' interests helpful. A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?* (Emphasis added.)

H **[25]** At the risk of repetition, may I emphasise that the Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 (PC) stressed at p 56 that the courts should not decide the issue of joinder by a person as a defendant based on the dichotomy 'that a party may be added if his legal interests will be affected by the judgment in the action but not if his
I commercial interests only would be affected':

> It has been sometimes said as in *Moser v Marsden* [1892] 1 Ch 487 and in *In re IG Farbenindustrie AG* [1944] Ch 41 that a party may be added if his legal interests will be affected by the judgment in the action but not if his commercial interests only would be affected. *While their Lordships agree that the mere fact that a person is likely*

to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy between 'legal' and 'commercial' interests helpful. A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action? (Emphasis added.)

[26] To that extent, the passage below which I reproduce from the judgment in *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63 (SC) at p 65 must be read in the context of the qualification expressed by the Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52, set out above by me:

It is settled law, on the authorities, that a party may be added if his 'legal interests' will be affected by the judgment in the action but not if his commercial interests alone would be affected: per Lord Diplock in Pegang Mining Co Ltd v Choong Sam & Ors at pp 55–56. In that case, the Privy Council had formulated the test to determine whether a party's interests in the matter are 'legal' or merely 'commercial' in the following words (at p 56):

> A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in this action?

[27] In *Tajjul Ariffin bin Mustafa v Heng Cheng Hong* [1993] 2 MLJ 143 (SC) Edgar Joseph Jr SCJ said at p 151 on joinder of parties:

To revert to the question of law posed at the outset, we consider that the following general principles as to parties may be distilled from the rules of court and the authorities thereon.

(1) The principle of overriding importance is that all necessary and proper parties, but no others, should be before the court at the same time to enable the effectual and complete determination and adjudication to be made by the court of all questions and issues between the parties which arise for decision (see O 15 rr 4 and 6 of the RHC).

(2) To this end, no action will be defeated by reason of mere mis-joinder or non-joinder of any party which is capable of being remedied and is no defence (see *Abonloff v Oppenheimer*).

The joinder of parties is permitted as of right in a wide area of circumstances or otherwise with the leave of the court (see O 15 r 4 of the RHC).

(3) Additionally, the court has extensive discretionary powers — to add, substitute or strike out parties who are not proper or necessary, and for these purposes the court may even act of its own motion (see O 15 r 6 of the RHC).

(4) Generally, in common law and chancery matters, a plaintiff who considers that he has a cause of action against a defendant is entitled to pursue his remedy against that defendant alone and he cannot be forced to pursue his remedy against other

persons who he has no wish to sue (see Per Wynn-Perry J in *Dollfus Mieg et Compagnie SA v Bank of England*).

(5) Nevertheless, a person who is not a party may be added as a defendant over the objections of the plaintiff on his own intervention or upon the application of the defendant or in some cases by the court of its own motion (see 1 Supreme Court Practice (1991) at p 193 para 15/6/71).

(6) *But, a defendant against whom no relief is sought by the plaintiff will generally not be added against the wishes of the latter* (see *Hood-Bars v Frampton & Co*). A third party notice is in such a case usually the proper procedure to adopt *though such a defendant can be added in a proper case* (see *Dollfus Mieg et Compagnie SA v Bank of England* [1951] 1 Ch 33). (Emphasis added.)

[28] Another case on joinder of parties is *Dollfus Mieg Et Compagnie SA v Bank of England,* [1950] 2 All ER 605 where at pp 610–611 Wynn-Parry J said:

On the other hand, it is to be observed, as I have already mentioned, that in The Annual Practice 1949, p 254, the description of the classes of case in which intervention can be insisted on is prefaced by the words 'generally speaking'. The authorities furnish instances of when intervention will be allowed and when it will not, and from those authorities the general rule embracing the three classes in question has been evolved, but in no case has the court attempted to lay down in an exhaustive statement all the cases in which the court will allow or refuse applications for the joinder of new defendants. On one side of the line is *Moser v Marsden*, which establishes that an indirect interest on the part of an intervener is not sufficient. In that case the plaintiff, the patentee of a machine, brought an action against the defendant for using a machine which he alleged was an infringement of his patent. *The maker and patentee of the defendant's machine applied to be added as a defendant, alleging that a judgment in the action would injure him, and that the existing defendant would not efficiently defend the action. The application was refused by the Court of Appeal, reversing the decision of the Vice-Chancellor of the County Palatine of Lancaster*. In his judgment, Lindley LJ, having referred to RSC O 16 r 11, said ([1892] 1 Ch 490):

> In order to properly understand the rule we must look at the whole of it. It begins by saying, 'No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties' — that is the key to the whole section: if the court cannot decide the question without the presence of other parties, the cause is not to be defeated, but the parties are to be added so as to put the proper parties before the court ... Can it be said that the rule prevents the plaintiff from proceeding against a defendant without having to litigate with everybody who may be in any way affected, however indirectly, by the action? It appears to me that it does not. The counsel for the applicant grounded his argument on the allegation that Montfort's interest would be affected by the decision in this action. *It is true that his interest may be affected commercially by a judgment against the defendant, but can it be said that it would be legally affected? Can we stretch the rule so far as to say that whenever a person would be incidentally affected by a judgment he may be added as a defendant? No case has been cited that goes so far as that*: *Vavasseur v Krupp*, and

> *Apollinaris Co v Wilson*, are the nearest to the present case. But in both those cases the proceedings affected the property of persons not before the court. I can understand the application of the rule where the property of a third party is affected. He may well say, 'I am not to be deprived of my property in my absence'. But this case does not come up to that. (Emphasis added.)

THE TEST THE COURT WILL USE TO DECIDE WHETHER OR NOT TO ALLOW AN APPLICATION BY A PERSON TO BE ADDED AS A DEFENDANT WHEN NO RELIEF IS SOUGHT BY THE PLAINTIFF AGAINST THAT PERSON

[29] From decided cases, the test the courts will use to decide whether or not to allow an application by a person to be added as a defendant when no relief is sought by the plaintiff against that person will be based on the following principles:

(a) a person against whom no relief is sought by a plaintiff will generally not be allowed to intervene to be added as a defendant in a suit against the wishes of the plaintiff. This is because a plaintiff is entitled to pursue his remedy against a defendant that he chooses and he cannot be forced to pursue his remedy against other persons who he has no wish to sue;

(b) a person will generally not be allowed to intervene in a suit to be added as a defendant if his interest will only be affected commercially, but not legally affected by the judgment in the said suit. However, in a proper case intervention will be allowed (see *Tajjul Ariffin bin Mustafa v Heng Cheng Hong* [1993] 2 MLJ 143 SC Edgar Joseph Jr SCJ and *Dollfus Mieg Et Compagnie SA v Bank of England* [1951] Ch 33); and

(c) the dichotomy between 'legal' and 'commercial' interests is not helpful. A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action? (see *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 Lord Diplock at p 56).

THE TEST FOR INTERVENTION IN MY VIEW

[30] To my mind, the test for intervention whether or not to allow an application by a person to be added as a defendant when no relief is sought by the plaintiff against that person should not be constricted by the rights or liabilities or legal interests or commercial interests' analysis.

[31] To do so will do injustice to the plain meaning of the words in O 15 r 6(2)(b) of the ROC 2012 which reads:

> Misjoinder and non-joinder of parties (Order 15 rule 6)

A (1) ...

(2) Subject to this rule, at any stage of the proceedings in any cause or matter, *the Court may* on such terms as it thinks just and either of its own motion or on application —

B (a) ...

(b) *order any of the following persons to be added as a party, namely* —

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary *to ensure that all matters in dispute in the cause or matter may be effectually and completely* C *determined and adjudicated upon*; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with *any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to* D *determine as between him and that party* as well as between the parties to the cause or matter. (Emphasis added.)

[32] The presence in O 15 r 6(2)(b) of the ROC 2012 of these words:

E to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon' and 'any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party.

show that the courts can, in a proper case, allow a person to be added as a F defendant even when the person will not be legally affected by the subsequent judgment in the said suit, but will only be affected commercially.

[33] Support for this broad based approach can be seen from this passage of the Privy Council's grounds in *Pegang Mining Co Ltd v Choong Sam & Ors* G [1969] 2 MLJ 52 Lord Diplock at p 56:

The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In their Lordships' view *one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the* H *matter in dispute in the action without his being given an opportunity of being heard*. To achieve this object calls for a *flexibility of approach* which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases. (Emphasis added.)

I **[34]** Indeed, the Singapore courts have similarly considered applications to intervene under their Singapore Rules of Court of the O 15 r 6(2)(b)(i) and (ii), which are pari materia with our O 15 r 6(2)(b)(i) and (ii) of the ROC 2012, by construing whether the facts come within the words of O 15 r 6(2)(b)(i) and (ii) (see *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 4 SLR 25

Singapore Court of Appeal, Chao Hick Tin JA at para [18] and *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] SGCA 60; [2016] 1 SLR 915 Singapore Court of Appeal, Sundaresh Menon CJ at para [39]).

[35] Access to justice is one of the main pillars of a vibrant democracy. If a person comes to court to apply to be added as a defendant in a suit, his application should be viewed favourably unless it is clear he is a 'busybody' in law or mala fide in his application. After all, court litigation is expensive and time consuming. No one will want to voluntarily be embroiled in a litigation unless he or she is clearly aggrieved.

[36] With that, I now apply the law to the facts of this case.

APPLICATION TO FACTS

[37] In my view, an application to be added as a defendant in a suit will be allowed if serious charges of fraud and attacks on character are made on the proposed intervener in the statement of claim of the plaintiffs even if no reliefs are claimed against the proposed intervener by the plaintiffs.

[38] The proposed intervener is perfectly entitled to say 'I want to come in and defend my reputation as well as to defend against liabilities which will accrue to me if there are findings against me by the judge in the suit. Why should I leave my honour and good name as well as potential liabilities to be defended by counsel for the other defendants, no matter how eminent as in this case, when their duties are owed to other defendants and not me?'

[39] In the instant case, in my view it is right that Low Beng Choo be allowed to intervene in the suit to defend her good name and reputation as well as against liabilities which will accrue to her if there are adverse findings against her by me in the suit.

[40] As a senior lawyer, her good name and reputation is her bread and butter. Any adverse findings on her at the trial is also likely to result in a complaint of misconduct against her to the disciplinary board and this can lead to her being struck off the rolls.

[41] I am aware of the following passage of the Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 where Lord Diplock at p 56 said 'While their Lordships agree that the mere fact that a person is likely to be *better off financially* if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party …'. (Emphasis added.)

The passage is not applicable here as Low Beng Choo's case is that she will to be worse off financially.

[42] I am also conscious of the fact that in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 4 SLR 25 Singapore Court of Appeal, where the material facts are roughly similar to the case before me, Chao Hick Tin JA speaking for the Singapore Court of Appeal refused intervention by two advocates and solicitors in a complaint lodged by Wee Soon Kim Anthony to the Law Society of Singapore against the two advocates and solicitors.

[43] The facts are as follows. The complaint was lodged against two advocates and solicitors, namely, Davinder Singh SC and Hri Kumar. The gist of the complaint relates to the preparation of affidavits for clients in relation to judicial proceedings and which affidavits allegedly contained false statements. The two solicitors argued that they were entitled to intervene pursuant to O 15 r 6(2)(b)(i), namely, that they are persons whose presence before the court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon.

[44] The Singapore Court of Appeal refused to allow intervention on the ground that the solicitors are neither persons who 'ought to be joined' as parties, nor is their presence 'necessary' to ensure that all matters in the cause may be effectually and completely determined, within the meaning of O 15 r 6(2)(b)(i) of the Rules of Court. The hearing of the application could quite properly proceed without the presence of the two solicitors. While they have an interest in the outcome of the application, an adverse decision by a judge in such an application does not mean that the solicitors' rights are affected. All it means is that the solicitors must explain themselves formally before the disciplinary committee (see para [17]).

[45] The Singapore Court of Appeal judges furnished the following reasoning in support of their decision:

> [28] As this court noted in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR 145, Pt VII of the Act sets out an elaborate scheme on how a complaint against a solicitor should be dealt with, with emphasis on objectivity and transparency and the need for maintaining the highest standards of professionalism and integrity. This can be seen from the fact that the Act allows the complainant, should the conclusion of the IC or the DC be in favour of the solicitor concerned, to apply to the High Court for a review of the decision. There is no corresponding facility accorded to the solicitor should the decision of the IC or DC be against him. But of course, if the IC should decide that the complaint warrants a formal investigation by the DC, the solicitor would have the opportunity to respond before the DC. Similarly, if the DC should find that cause of sufficient gravity for disciplinary action exists under s 83, the solicitors would have the opportunity to challenge that finding before the court of three judges.

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> [29] *It cannot be disputed that the solicitor complained against has an interest in the outcome of an application made by a complainant* under s 96. *It is also understandable why the solicitor may wish to intervene in that proceeding even though it is quite unnecessary for him to do so. But it is altogether another thing to say that there is a necessity for him to do so, a need of such a gravity that the court should invoke its inherent jurisdiction*. The intervention in such a situation by the solicitor may or may not be of assistance to the court. After all, the report of the IC, with all the necessary annexes, would be before the court when it considers the application. Besides counsel for the complainant/applicant making submission, counsel for the Law Society would also be heard in response, the latter no doubt seeking to support the recommendation of the IC and the decision of the Council. *Even if the solicitors should be allowed to intervene, what their counsel would seek to do would really be no more than what the Law Society's counsel would be doing*. Thus, we hold that the circumstances do not warrant the court invoking its inherent jurisdiction. (Emphasis added.)

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C

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[46] In my respectful view, *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 4 SLR 25 Singapore Court of Appeal has taken a rather restrictive view of O 15 r 6(2)(b)(i) of the Singapore Rules of Court, which are pari materia with our O 15 r 6(2)(b)(i) of the ROC 2012. The decision should, with respect, be confined to the facts of that case.

E

[47] As I have said earlier above, access to justice is one of the main pillars of a vibrant democracy. If a person comes to court to apply to be added as a defendant in a suit, his application should be viewed favourably unless it is clear he is a 'busybody' in law or mala fide in his application. After all, court litigation is expensive and time consuming. No one will want to voluntarily be embroiled in a litigation unless he or she is clearly aggrieved.

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[48] Furthermore, much harm can happen from the time intervention is denied till the lawyer have his day in court, to use an English idiom. In these days of social media, a person, ie Low Beng Choo may well suffer irreparable harm if not allowed to intervene now to defend herself but to await her day in the disciplinary board or in a subsequent suit where she is named as a defendant.

G

H

ALL PARTIES AFFECTED BY A COURT ORDER MUST BE MADE PARTIES TO THE SUIT

[49] A further legal principle that supports Low Beng Choo's application to be added as a defendant is the principle that 'All parties affected by a court order must be made parties to the suit'.

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[50] This principle can be seen from the Court of Appeal decision in *Saujana Resort (M) Bhd v Chin Cheen Foh & Ors and another appeal* [2021] 3 MLJ 873;

[2021] 3 CLJ 71 which held at para [41]:

> It is trite that in an application for declaration, all parties who would potentially be affected by such an order must be before the court. An action for a declaration is an important device for ascertaining and determining the rights of parties. And it is settled that when a declaratory order is sought, all interested parties must be before the court. See dicta of Viscount Maugham in *London Passenger Transport Board v Moscrop* [1942] AC 332 at p 345 (HL) which was adopted by the Supreme Court in *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeal* [1997] 3 MLJ 23 at p 45; [1997] 4 CLJ 253 p 282 vide Lord Radcliffe's observation in *Ibeneweka v Egbuna* [1964] 1 WLR 219 p 226. See also *Chor Phaik Har & Ors v Choong Lye Hock Estates Sdn Bhd & Ors* [1996] 2 MLJ 206; [1996] 1 MLRA 470; [1996] 4 CLJ 141 CA; *Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v Director General Of Trade Unions & Ors* [1990] 3 MLJ 231; [1990] 2 CLJ 405; [1990] 2 CLJ Rep 218 and *Chia Saw Kee & Anor v Huah Leong Holdings Sdn Bhd & Anor* [2003] 3 MLRH 46; [2003] 8 CLJ 124 HC for an application of this principle.

CONCLUSION

[51] I therefore allow the application of Low Beng Choo to be added as a defendant and to participate in the trial.

[52] These therefore are my grounds of judgment. I thank counsel for the proposed intervener for his helpful submissions which have greatly crystallised my thoughts.

DECISION

[53] For the above reasons, I therefore allow the application to intervene as a defendant and for consequential orders prayed for in encl 90 prayers 1 to 4. Costs in the cause.

[54] Low Beng Choo is to file her defence within 14 days from 5 February 2024. The plaintiffs are to file their reply within 14 days from service of the said defence.

[55] All counsel are to attend before my Deputy Registrar Puan Rozana bt Husin on 7 February 2024 by e-review at 9am to fix a case management before me this month to receive further directions for trial arising from my orders here. The trial will proceed on the dates as fixed earlier.

Application to intervene as a defendant allowed with costs.

Reported by Ashok Kumar